

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

1200 19TH STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

FACSIMILE

(202) 955-9792

www.kelleydrye.com

NEW YORK, NY
TYSONS CORNER, VA
LOS ANGELES, CA
CHICAGO, IL
STAMFORD, CT
PARSIPPANY, NJ

BRUSSELS, BELGIUM
HONG KONG

AFFILIATE OFFICES
BANGKOK, THAILAND
JAKARTA, INDONESIA
MUMBAI, INDIA
TOKYO, JAPAN

DIRECT LINE: (202) 887-1248

EMAIL: rbuntrock@kelleydrye.com

November 1, 2002

VIA ELECTRONIC FILING

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, N.W.
Washington, D.C. 20554

**Re: Application by SBC Communications Inc. For Authorization Under
Section 271 of the Communications Act to Provide In-Region,
InterLATA Service in the State of California;
WC Docket No. 02-306**

Written *Ex Parte* Presentation by Telscape Communications, Inc.

Dear Ms. Dortch:

Pursuant to Section 1.1206(b)(1) of the Commission's Rules, Telscape Communications, Inc. ("Telscape") submits this written *ex parte* presentation in the above-captioned docketed proceeding. The purpose of this presentation is address questions that arose in an oral *ex parte* presentation made by Telscape to the SBC/California 271 review team on October 23, 2002. Specifically, Telscape addresses herein the discrepancy between SBC's purported satisfactory performance in providing Telscape with accurate wholesale bills, in compliance with Measure 34 (Bill Accuracy) of the California Performance Incentive Plan,¹ and Telscape's abysmal day-to-day experience in dealing with SBC's wholesale bills, which continue to be inaccurate, and require Telscape to spend hundreds of hours auditing and correcting.

¹ See *Opinion on the Performance Incentives Plan for Pacific Bell Telephone Company, In re: Order Instituting Rulemaking on the Commission's Own Motion into Monitoring Performance of Operations Support Systems*, California PUC Docket No. 97-10-016, et al (Mar. 6, 2002) and subsequently modified by Opinion Modifying Decision .

Ms. Marlene Dortch, Secretary
November 1, 2002
Page Two

Telscape indicated in its October 23 meeting with the review team (as well as in meetings with the Department of Justice and Comments to the California PUC) that SBC has, on a monthly basis, failed to comply with Checklist Item 2 (which requires that Pacific produce readable, auditable and accurate wholesale bills.²) Telscape noted that it spends hundreds of personnel hours each month auditing SBC's inaccurate wholesale bills. Further, Telscape stated that it has found billing errors each and every month that Telscape has done business with SBC. Indeed, SBC has, as a general matter, grossly over-billed Telscape. Telscape also noted that, resolution of billing disputes takes between six and fourteen months, and that while the disputes are pending, SBC demands payment for disputed bills period, and continues to issue Telscape bills that are inaccurate as a result of inherent SBC billing system defects.

Members of the Commission's SBC California 271 review team asked Telscape to address the discrepancy between the poor performance Telscape experiences with SBC's wholesale bills on a daily basis and the high performance reported by SBC for Telscape in Measure 34, Billing Accuracy.³ Telscape submits that there are a couple possible explanations for the discrepancy between SBC's exemplary performance on paper and Telscape's real-life experience with SBC.

First, Measure 34 cannot capture (nor is it designed to capture) wholesale billing problems that are purely the result of SBC company policy. A prime example is SBC's policy regarding "Port-Back Billing." As Telscape indicated previously, SBC had maintained a policy to unilaterally submit port-back orders for end-users returning to SBC and charging Telscape for the disconnect at the fully manual rate instead of the mechanized rate for which the orders were eligible. Telscape raised the issue in the SBC CLEC user forum, at which time SBC finally decided to reverse their policy. SBC represented to the members of the CLEC user forum that they would automatically credit all CLECs for the improperly billed amounts. Despite this representation, however, in the final release of the documentation SBC did not make the policy change universally applicable, and instead credited only those CLECs that disputed the charges and quantified the amount. Accordingly, such billing credits would not have been captured by the criteria measured in Measure 34.

A second possible reason that Measure 34 does not give a complete and accurate picture of SBC's billing accuracy performance is that SBC has entered into billing settlement agreements with CLECs whereby SBC imposes a settlement condition that provides that any billing credits provided to the CLEC will not be subject to the terms of the California performance incentive plan. That is, SBC unilaterally excludes reporting of those billing credits

² See *Verizon Pennsylvania Order*, Memorandum Opinion and Order, 16 FCC Rcd 17419, ¶22-23 (2001). ("Verizon Pennsylvania Order").

³ The Commission noted that SBC's performance under Measure 34 for Telscape was in the mid to high ninetieth percentile.

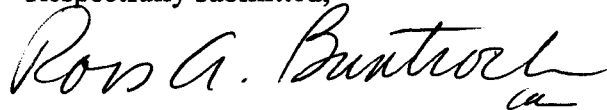
KELLEY DRYE & WARREN LLP

Ms. Marlene Dortch, Secretary
November 1, 2002
Page Three

provided pursuant to private, off the books settlement agreements from its reported performance, contrary to the requirements of the California Performance Incentive Plan. The result is that SBC's true performance for Billing Accuracy is effectively masked. Clearly, such activity is not only questionable as a legal matter, it also inaccurately inflates SBC's performance, as measured by Measure 34 on a monthly basis.

At bottom, the record in this proceeding does tell the whole story. SBC, through policy decisions and manipulation of data, is masking its performance under Measure 34. In Telscape's experience, SBC's poor billing performance continues to impede competitors through pervasive billing problems and associated costs of resolution. Accordingly, the Commission should reject Pacific Bell's application for, at a minimum, failure to satisfy checklist item 2.

Respectfully submitted,

A handwritten signature in black ink, reading "Ross A. Buntrock" with a stylized flourish at the end.

Ross A. Buntrock

cc: Renee Crittendon, WCB
Susan Wittenberg, DOJ
Brianne Kucerik, DOJ
Qualex International